



Mining, Department of Natural Resources, State of Utah (the "Division") did not file a Memorandum in Opposition to the Joint Objection, but the Division did oppose the Joint Objection at the hearing described below.

Pursuant to notice, the Joint Objection came on for hearing at a regularly scheduled meeting of the Board held on January 24, 1996, at 10:00 a.m. in the Board's hearing room at 3 Triad Center, 355 West North Temple, Suite 520, Salt Lake City, Utah. Attorney Jeffrey W. Appel appeared on behalf of the Service District. Attorney J. Craig Smith appeared on behalf of the Water Association and the Irrigation Company. Assistant Utah Attorney General Thomas A. Mitchell appeared on behalf of the Division. Attorney F. Mark Hansen appeared on behalf of the Mining Company. No other persons entered appearances. Assistant Utah Attorney General Patrick J. O'Hara acted as legal counsel to the Board.

#### Order

After hearing all the arguments of the above counsel, and after reviewing the respective filings by the above parties, the Board hereby finds and rules as follows:

1. The Division issued a Permit to the Mining Company on the Bear Canyon Mine October 30, 1985, which Permit was renewed by the Division for five years on May 20, 1991. The first renewal term on the Permit was to expire on or about November 2, 1995.
2. On or about June 16, 1995, the Mining Company

filed a permit renewal application with the Division asking the Division to grant the Mining Company a second five-year renewal on the Permit for the Bear Canyon Mine.

3. The Objectors, in their jointly filed "Objections to Permit Renewal and Request for Informal Conference" dated and filed October 12, 1995, timely asked the Division to hold an informal conference to allow the Objectors to present their objections to the requested Permit renewal.
4. For various reasons (explained at length at the January 24, 1996, Board hearing but which need not be re-stated here), it is an undisputed fact that the Division did not hold the informal conference requested by the Objectors prior to the Division making a decision on November 2, 1995, which purported to renew the Mining Company's Permit for another five-year term.
5. The Division's purported decision of November 2, 1995, to renew the Permit is hereby reversed because the Board holds that the Division must first hold the informal conference requested by the Objectors before the Division can make a final decision on the requested Permit renewal.
6. The Division shall hold the informal conference requested by the Objectors, and the Division shall

consider all of the objections presented at the informal conference before the Division makes a final decision as to the requested five-year Permit renewal. The informal conference shall be at a date, time and place to be announced by the Director of the Division.


7. The Board does not express any opinion at this time as to the merits, if any, of the Objectors' various contentions, or as to legal issues raised by the Mining Company in its Memorandum in Opposition concerning the alleged res judicata and/or collateral estoppel effect of any prior ruling by the Board concerning the Bear Canyon Mine. Likewise, the Board does not express any opinion at this time as to the discovery issues raised by the Objectors at the January 24, 1996, hearing. All of the foregoing issues shall be considered in the first instance by the Division, if they are raised at the informal conference requested by the Objectors, so they are not yet ripe for Board review and/or action.
8. The Board is mindful that the Objectors carry the burden of proof on their objections to the requested Permit renewal, and that the Mining Company shall not be forced to stop or change permitted mining activities unless and until the

Division has first found that the Objectors have carried that burden of proof. Accordingly, the Board, acting pursuant to Utah Code Ann. § 40-10-6(9) (1953, as amended) and Utah Administrative Code R645-300-200.240, hereby enters an order of temporary relief extending the Mining Company's Permit on the Bear Canyon Mine retroactive to November 2, 1995, and continuing from day to day from and after that date until such time as the Division shall issue its final decision following the informal conference requested by the Objectors.

9. This matter is remanded to the Division for further administrative proceedings consistent with this Order.

ISSUED AND SIGNED this 23<sup>rd</sup> day of February 1996.

STATE OF UTAH, BOARD OF OIL,  
GAS AND MINING

By   
Dave D. Lauriski  
Chairperson

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "ORDER GRANTING TEMPORARY RELIEF AND REMANDING FOR AN INFORMAL CONFERENCE" in Docket No. 95-025, Cause No. ACT/015/025, to be mailed certified mail, on the 23<sup>rd</sup> day of February, 1996, to the following:

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and hand-delivered the same date noted above to:

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